NO. 82-824

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

EFFIE ROY STANSBURY, personal representative
of the Estate of Larry R. Stansbury,
Plaintiff-Petitioner,

versus

CHEVRON U. S. A. INC.,
Defendant-Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

BRIEF BY RESPONDENT CHEVRON U.S.A. INC.
IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE
CORRECTING INACCURACY

Lest silence be construed as assent, respondent hereby seeks to correct inaccuracies and omissions by petitioner in the Statement Of The Case, as follows:

No. 1- It is affirmatively stated on page 4 thereof that petitioner's decedent was at all times pertinent "- - - - - a salaried employee on the executive level." and "He was considered supervisory personnel." In this connection the uncontroverted facts found by the District Court and affirmed by the Fifth Circuit clearly established that the late Larry R. Stansbury was employed by respondent as a chemical process foreman working a daily shift at a salaried job overseeing and inspecting offshore painting projects on fixed structures performed by independent contractors. In no sense of the word can it be shown from the record that Mr. Stansbury possessed managerial authority, participating in the day to day business administration of the corporation by whom he was employed; and,

No. 2- Additionally, on page 7 of the petition it is represented that "- - - - - the Fifth Circuit affirmed in an opinion which failed to address the claim under the Death on the High Seas Act." The July 22, 1982 Opinion complained of by petitioner concluded on the last page, as follows:

"Therefore, summary judgment was properly granted. Because Longshoremen's and Harbor Workers' Compensation is the exclusive remedy under the Outer Continental Shelf Lands Act, Mrs. Stansbury may not bring an action under DOHSA or general maritime law. 2/ The judgment of the district court is
AFFIRMED.

2/ Nothing said in Executive Jet Aviation Inc. v. City of Cleveland, 409 U.S. 249, 93 S. Ct. 493, 34 L. Ed. 2d 454 (1972), or Rodrigue, supra, weakens our conclusion. OCSLA adopted Longshoremen's and Harbor Workers' Compensation to cover "maritime, non-maritime or ambiguous amphibious" claims for injuries to persons employed in natural resource operations on the OCS. See Nations v. Morris, 483 F.2d at 585. OCSLA has no situs requirement and the status requirement relates to OCS extractive operations rather than to traditional maritime employment."

SUMMARY OF ARGUMENT

A perusal and study of the petition for writ of certiorari utterly fails "- - - - - to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration - - - - -", so that such should be dismissed. U. S. Sup. Ct. Rule 21. *Galveston Causeway Const. Co. v. Galveston, H. & S. A. Ry. Co.*, 262 U. S. 747, 43 S. Ct. 503, 676 L. Ed. 1212 (1923).

Certiorari to review the August 13, 1982 judgment and July 22, 1982 opinion in *Stansbury v. Sikorski Aircraft, et al.*, 681 F.2d 948 (5th Cir. 1982), rendered by the United States Court of Appeals for the Fifth Circuit is not an appealable right, but involves judicial discretion. In this connection, petitioner does not complain of a conflict as to the final decision by the Fifth Circuit with any other Federal Court of Appeals on the same matter, or that the Fifth Circuit has departed to such an extent from the accepted and usual course of judicial proceedings, which would justify an exercise of the power of supervision by this Court. U. S. Sup. Ct. Rule 17. *Durham v. U. S.*, 401 U. S. 481, 91 S. Ct. 858, 28 L. Ed. 2d 200 (1971); and, *Rice v. Sioux City Memorial Parks Cemetery, Iowa*, 349 U. S. 90, 75 S. Ct. 614, 99 L.Ed. 897 (1955).

ARGUMENT

The apparent questions presented for review to the Court in the petition seek answers to the application of Death on the High Seas Act (U. S. C. A., Title 46, Section 761, et seq.), the Longshoremen's and Harbor Workers' Compensation Act (U. S. C. A., Title 33, Section 901, et seq.) and the General Maritime Law in connection with the death of petitioner's decedent arising out of the fall of a helicopter into the Gulf of Mexico while being transported as a passenger in the course and scope of his employment by respondent as a chemical process foreman. The District Court concluded that decedent was engaged in maritime employment in natural resource operations on the Outer Continental Shelf, died in a maritime status and the exclusive remedy for his survivors was under LHWCA.

The latter Act specifically provides for compensation to workers killed during the course of maritime employment. For 45 years after its enactment in 1927, the test for coverage thereunder was simply whether the accident occurred on navigable waters. See *Calbeck v. Travelers Insurance Company*, 370 U. S. 114, 82 S. Ct. 1196, 8 L.Ed.2d 368 (1972). In 1972, Congress amended LHWCA to add status to the traditional situs test in determining coverage. The status criterion calls for the worker to be engaged in maritime employment, LHWCA Section 903(a), and the situs test now requires that the accident occur upon navigable waters.

Thus, an employee killed in the regular course of his employment on navigable waters of the United States automatically meets both the status and situs tests. In *P. C. Pfeiffer Co. v. Ford*, 444 U. S. 69, 100 S. Ct. 328, 62 L.Ed.

2d 225 (1979), this Court declared that one should look to the nature of the activity to which the worker was assigned in determining whether maritime employment was involved. Id. at 82-83, 100 S. Ct., at 337, 62 L.Ed.2d at 236. It was explicitly stated therein, as follows: "- - - - - we understand the word 'including' to indicate that 'longshoring operations' are a part of the *larger group of activities that make up 'maritime employment'*. Id. 77 n. 7, 100 S. Ct. at 334 n. 7, 62 L.Ed.2d at 233 n. 7 (emphasis added).

Adhering to that observation and attempting to fulfull the broad remedial purposes of LHWCA, coverage is not limited to the occupations specifically listed. Indeed, the Act states that the list of covered employees "includes" the enumerated occupations. It does not limit coverage to those particular job classifications. LHWCA Section 902(3). The Senate Report thereon states, as follows: "The definition specifically includes any longshoreman or other person engaged in longshoring operations, any harbor-worker, including a ship repairman, shipbuilding or ship breaker. *It does not exclude other employees traditionally covered* - - - - -". S. Rep. No. 1125, 92d Cong., 2d Sess. 16 (1972) (emphasis added).

At some length in its July 22, 1982 opinion the Fifth Circuit carefully reviewed how the Outer Continental Shelf Lands Act, U. S. C. A., Title 43, Section 1331, et seq., incorporates the remedies of LHWCA to the established facts of this case. No useful purpose can be served by repeating this well presented explanation and petitioner has not in any manner whatsoever advanced relevant authority to the contrary.

It is submitted that respondent's sole liability to petitioner is specifically and unequivocally limited to the LHWCA

wherein Section 905(a) states, as follows:

> "*The liability of an employer* prescribed in section 904 of this title *shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependants, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death,* - - - - -" (emphasis added).

CONCLUSION

Therefore, the District Court as a matter of law properly concluded that the LHWCA was petitioner's exclusive remedy against respondent, in denying recovery under DOHSA and the General Maritime Law. Accordingly, the petition for writ of certiorari is without merit and should be dismissed.

Respectfully submitted,

(SIGNED) LLOYD C. MELANCON

Of Counsel:
Messrs. McLoughlin, Barranger,
Provosty and Melancon

CERTIFICATE

It is hereby certified that 3 copies of the above and foregoing brief were served by depositing such in a mailbox of the United States Postal Service with first-class postage prepaid affixed on the envelope addressed as follows:

Gary E. Theall, Esq., of Messrs. Theall and Fontana, counsel for Effie Roy Stansbury, P. O. Box 877, Abbeville LA 70510,

in accordance with the provisions of U.S. Sup. Ct. Rule 28.3 this 4th day of November, 1982.

(SIGNED) LLOYD C. MELANCON